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C O N F I D E N T I A L SECTION 01 OF 03 MEXICO 003595

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TAGS: [CONS](#) [PREL](#) [PGOV](#) [PHUM](#) [KJUS](#) [KCRM](#) [MX](#)
SUBJECT: PGR MAKES ITS CASE, AGAIN, ON BRAD WILL

REF: MEXICO 3343

Classified By: Political Minister Counselor Charles V. Barclay.
Reason: 1.4 (b),(d).

¶1. (SBU) Summary. Mexico's Office of the Attorney General (PGR) provided Emboffs with a three-hour brief on its investigation into the death of Amcit journalist Brad Will who was shot and killed in the course of civil unrest in Oaxaca in October 2006. Much of what PGR presented tracked with prior briefings. PGR officials called into question the conclusions reached by Mexico's National Human Rights Commission (CNDH) in its investigation maintaining CNDH failed to take into consideration key evidence PGR had collected. Instead, they presented the basis for their contention that Will was killed by someone at close range and the circumstantial evidence that led to their arrest of Juan Manuel Martinez Moreno, a supporter of the Oaxacan People's Assembly (APPO), for the murder. Emboffs urged PGR officials to consider offering a presentation of their findings to the family of Brad Will in the spirit of transparency but PGR declined questioning the utility of such a meeting. End Summary.

¶2. (U) On November 20, PGR's Coordinator for International Affairs Adrian Franco, its Special Prosecutor for Crimes Against Journalists Octavio Alberto Orellano Wiarco, its assistant legal attache working Mexico's Embassy in the U.S. Guillermo Fonseca, and Assistant Prosecutor Francisco Javier Ribero Sanchez offered the Embassy's Consul General, Department of Justice attachQ, and Deputy Political Counselor an extensive brief on PGR's investigation into the killing of Amcit journalist Brad Will that it hoped the State Department would take into consideration in preparing its report to Congress on the Will investigation. The PGR officials made extensive reference to film taken by Will immediately prior to his death, downloaded from the internet, as well to other film and photographs taken the day of the shooting. They also addressed a series of questions the Department had asked us to raise regarding the investigation of the ensuing judicial procedures.

The Case Against CNDH's Theory

¶3. (SBU) CNDH contends its analysis of forensic evidence suggests Will was shot twice in rapid succession from a distance of 35-50 meters from an angle that would place the shooter behind a red truck located about that distance in front of Will. PGR rejects this theory principally on three grounds.

-- First, PGR officials recall that Will was shot by a 38 revolver. Working off Will's own film footage, PGR reenacted the scene Will was facing when he was shot with a view to assessing the prospects of someone getting off two shots at Will from behind the red truck he was facing. Taking into consideration the array of people between Will and the truck, PGR concludes it would have been almost impossible for someone to get off two accurate shots with a 38 revolver from that range.

-- Second, PGR officials note on the film that several adherents of APPO walk directly in front of the truck from which CNDH claims shots were being fired. They manifest no concern about a shooter or shooters behind the truck suggesting to PGR officials that no one was shooting from

there.

-- Third, CNDH claims the second bullet entered Will as he fell forward and twisted to the left. PGR maintains Will fell on his back and not in the fashion alleged by CNDH. Replaying its version of the Will tape, PGR officials note no evidence of a second shot fired in quick succession of the first. Instead, its investigation suggests Will was shot from up close and only after his shirt had been rolled up after the first shot. As evidence, they claim the second bullet passed through his shirt twice. They also maintain that the doctor who performed the autopsy on Will disagreed with CNDH's findings regarding the second bullet concluding instead that Will was shot at an angle that suggested the shooter was standing over him and in relatively close proximity.

The Case in Support of PGR's Theory

¶4. (C) PGR's reenactment of the crime scene suggests Will was shot at close range as he panned right with his camera. PGR officials note that Will's footage captures the image of a young male, directly in front of him, who seemingly makes eye contact with someone to Will's right and then quickly moves out of sight immediately before Will was killed. Will's film never captures the shooter but it does capture a journalist crouched against the wall who would have observed Will being shot if PGR's theory were true. PGR maintains this journalist works for the leftist newspaper La Jornada but provided no useful information in his declaration.

¶5. (C) Will's film captures several APPO members armed with small handguns. In fact, immediately before Will is shot, an APPO member who appears armed with a small handgun approaches Karol Ivan Llescas Resendiz, a reporter with Televisa, immediately to Will's left and is caught on tape apparently

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telling the journalist to stop filming. At that very moment Will is shot. The events happened in such quick succession that Llescas initially thought he had been shot. Llescas told PGR that he saw two individuals -- one dressed completely in black -- in close proximity to Will right after he (Will) was shot. Llescas later identified Martinez by photograph as the person dressed in black that he had seen close to Will.

¶6. (C) According to PGR, a local resident of Oaxaca, Alfredo Feria Perez, claims he was in the vicinity of Will at the time Will was shot. He did not see the person who shot Will but stated that he saw someone who owns two cars -- a black Jeep Cherokee and a light brown Golf -- standing right next to Will after he was shot. He later identified, per a photograph PGR showed him, that Martinez was this person. After Will was shot, Feria said that he saw Martinez pass someone a small black bag and say, "one already fell" before running down the street. PGR maintains that after he made his declaration, Feria was approached by the Oaxacan Popular Indigenous Council (CIPO), an organization with ties to APPO, about attending one of its meetings and offered a job by the WorkersQ, Party (PT), another APPO supporter, suggesting to PGR that APPO was concerned about what Feria knew and sought to compromise his testimony.

¶7. (SBU) Addressing Department questions, PGR officials reported that they had not recovered bullets from any other victims that would suggest they were shot by the same weapon that killed Will. They maintained that they had re-examined the case against the three Oaxacan state police officers arrested and released initially but found insufficient evidence to press charges against them. They also said that they tracked down individuals photographed or filmed with weapons the day of Will's killing, but found none in possession of a 38 revolver, the weapon investigators concluded was used to kill Will. All claimed that they had fired their weapons in the air and not at the protesters.

PGR's Take on PHR's Report

¶8. (SBU) At the request of the Will family, the NGO Physicians for Human Rights visited Mexico in March 2008 to review evidence. Its report concluded one of the bullets that shot Will had ricocheted off of something red before hitting Will. Following up on the PHR's report, PGR reported

that one of its experts tested the red paint against everything red located in the vicinity of the Will shooting and found no match. Instead, the expert found that the paint corresponded with nail polish the ballistics expert examining the bullets had used to distinguish it from the other bullet.

When the investigators interviewed the Oaxacan expert in ballistics who produced the first report on the bullet removed from Will's body, he claimed he had painted the bullet with red nail polish. PGR accounted for the damaged state of the bullet as described in the PHR report noting that the bullet had been lodged in Will's spine and was damaged upon removal by the technician who performed the autopsy. PGR says that it has a video of the autopsy that substantiates this claim.

¶9. (SBU) PGR officials maintained that they took into consideration both PHR and CNDH's reports before they arrested Martinez for Will's killing. In fact, Orellana said that the prosecutors went back to PGR's experts with both reports asking them if they wanted to reconsider their findings. They reportedly insisted on standing by their original conclusions. While PHR's report has not been formally "ratified" by its authors for authentication purposes, it was presented by PGR to the Oaxacan court along with all other evidence in the case, and much was part of the record considered by the judge who determined that there was sufficient evidence to detain Martinez and proceed with his prosecution. As part of the record, the PHR report also would be reviewed by any judicial authority ruling on this case in the future. PGR's Franco reported that the Attorney General's office was preparing a point by point refutation of PHR's report for our benefit and would share it with us when it was completed.

PGR Claims CNDH Report Lacking Key Elements

¶10. (C) While CNDH did not publish its report until September 26, it claims that it concluded its investigation in June. PGR maintains that CNDH's report consequently did not take into account three pieces of evidence that emerged after June. Separately, CNDH declined to take into consideration PGR's reenactment of the Will crime scene and the testimony offered by Feria.

-- On August 28, 2008, Televisa reporter Llescas identified Martinez as an individual he had last seen in the vicinity of Will when he was shot.

-- In August 2008, the journalist who took the photo of an alleged policeman wearing a red shirt shooting in the same street where Will was killed made a declaration that he took that photo twenty minutes before Will was killed and not immediately prior to Will's shooting as initially reported. PGR also notes that the red truck blocking the street on Will's tape was not evident in the photographer's picture of the armed policeman reinforcing PGR's argument that the

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photographer did not take his picture of the armed policeman immediately before Will was shot.

-- On August 29, 2008, the Oaxacan ballistics expert who examined the bullet removed from Will's body reported that he had painted the bullet with red nail polish.

PGR's Next Brief?

¶11. (C) PGR's Franco signaled PGR's willingness to provide another brief on its investigation to Department officials either in Washington or Mexico City. Emborffs assured him that we would share the essential elements of PGR's brief with Washington officials and let them decide whether another was necessary. Embassy's Consul General, however, urged PGR to consider offering the Will family a briefing in the interest of transparency. Franco initially signaled a willingness to consider this but in a follow on conversation with the Consul General said that he thought this kind of contact with the Will family would not/not be useful given its "attitude" toward Mexican authorities. If we thought that family's attitude might change, then the GOM could reconsider offering such a brief. Franco also presumed that the family would want to include its lawyer in the conversation -- a proposition the PGR/GOM would find problematic.

¶12. (C) Comment. Both CNDH and PGR rely heavily upon their respective versions of the Will tape to support their hypotheses regarding his killing. However, whereas CNDH claims to have a copy of the original that it received from the family, PGR concedes its version was downloaded from the internet. PGR's brief raises questions about the credibility of CNDH's conclusion that Will was shot by someone from a range of over 35 meters. It is also hard to deny that it would have been far easier for someone to shoot and kill Will from a close range -- a conclusion supported by the forensic evidence gathered by PGR's experts. Yet, PGR's case lacks two essential elements Q) a direct eyewitness to Will's killing and a compelling motive beyond its claim that an APPO member may have killed Will because he was filming its skirmish with the police or out of an attempt to create a cause célèbre. As such, PGR's case rests on circumstantial evidence which may well prove sufficient to convict Martinez in a Oaxacan court but may prove lacking in the court of public opinion. Martinez' lawyer has already raised a challenge to the case in district court, only the first of what we anticipate will be numerous challenges. Visit Mexico City's Classified Web Site at <http://www.state.sgov.gov/p/wha/mexicocity> and the North American Partnership Blog at <http://www.intelink.gov/communities/state/nap/> / BASSETT